

REMARKS

Reconsideration is requested.

The Examiner's allowance of claims 7-20, 22-23, and 27-38 and indication that claims 2-5 contain allowable subject matter are acknowledged.

Claims 1-37 are from the original patent.

Claims 38-74 have been previously added. Claim 75 has been cancelled. New claims 76-81 have been added.

Claims 21 and 46 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to point out and distinctly claim the subject matter of the invention.

Claim 18 has been amended to depend on claim 17 as suggested by the Examiner. Claim 46 has been amended to depend on claim 43 as suggested by the Examiner.

Claims 1, 6, 24-26, 39-46, 49-54, 58-59, 61-64, 67, 69-72 and 75 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,583,850 to Snodgrass et al. Claims 60 and 68 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,583,850 to Snodgrass.

This rejection is respectfully traversed. Contrary to the Examiner's assertion, the Snodgrass et al. reference fails to teach or suggest starting a tree search at a selectable level of the search tree, in combination with the other elements of the claims. Instead, the Snodgrass et al. reference teaches always

starting a tree search at the top node. See, for example, Fig. 12, and text starting at Col. 16, line 22; and, more particularly, text starting at Col. 17, line 53 of the Snodgrass et al. reference.

The Examiner cites to Col 13, ln 43-44, and alleges that Snodgrass “clearly teaches of starting a tree search at a selectable level of the search tree.” However, the selected initial level is ALWAYS the top level in accordance with the protocol of Snodgrass. There is no motivation in Snodgrass to do otherwise. In accordance with the application for the protocol disclosed in Snodgrass, there is no motivation for one skilled in the art to start the search anywhere other than the top level because, by doing so, one would have to interrogate the tags at least twice (once for the left branch and once for the right branch of the tree), instead of just once (at the top node), to determine if there are any tags passing through the field of the interrogator. This would seem inefficient to one skilled in the art upon reading the Snodgrass disclosure. Only in the present reissue patent application is it revealed that in situations where a large number of tags are known to be in the field can a user get a benefit (reduced number of collisions) from starting a tree search at a selectable level other than the top level of the search tree.

Finally, it seems that the Examiner is rejecting applicant’s claims 1, 6, 24-26, 39-46, 49-54, 58-64, 67-72 and 75 using a reference (Snodgrass) that teaches an instruction set that COULD be used to implement applicant’s claimed protocol. Using that logic, no algorithm that uses a known programming

language could ever be novel because, following the examiner's logic, the programming language itself anticipates all algorithms based on it. That, of course, is not the standard for patentability.

Therefore, the rejection is improper and should be withdrawn.

Claims 47-48, 55-57, 65-66 and 73-74 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,583,850 to Snodgrass in view of U.S. Patent No. 6,038,455 to Gardner et al.

This rejection is respectfully traversed. It would not be obvious to substitute a portion of the structure of Gardner et al. for portions of the structure of Snodgrass because there is no teaching in the references themselves of how the components should be combined or of which components of Gardner et al. should be combined with which components of Snodgrass. There are no teachings in the references themselves which teach that there would be any advantage resulting from selecting portions of the structure of Gardner et al. and integrating that structure somehow into the structure of Snodgrass. The mere fact that the structures of the references could possibly be somehow modified to result in the claimed structure does not render the claimed structure obvious unless the references themselves suggest the desirability of the modification. See *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

Evidence of a suggestion to combine may flow from the prior art references themselves, from the knowledge of one skilled in the art, or from the

nature of the problem to be solved. However, this range of sources does not diminish the requirement for actual evidence. Further, the showing must be clear and particular. See *In re Dembiczak*, 175 F.3d 994, 998, 50 USPQ2d 1614, 1616 (Fed. Cir. 1999). No such evidence exists here.


Therefore, the rejection under 35 U.S.C. 103 is improper and should be withdrawn.

A Statement of Status of Claims and Support in accordance with 37 CFR 1.174(c) is attached as a separate paper.

This application is believed to be in immediate condition for allowance, and action to that end is respectfully requested. If the Examiner's next anticipated action is anything other than a Notice of Allowance, the undersigned respectfully requests a telephone interview prior to issuance of any such subsequent action.

Respectfully submitted;

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Encl.: Statement of Status of Claims and Support